

to the Board's jurisdiction as provided in § 1108.2(b). Counterclaims are subject to the assignment provisions contained in § 1108.4(c)–(e). Counterclaims are subject to the monetary award cap provisions contained in § 1108.4(b)(2)–(3).

(d) *Affirmative defenses.* An answer to an arbitration complaint shall contain specific admissions or denials of each factual allegation contained in the complaint, and any affirmative defenses that the respondent wishes to assert against the complainant.

(e) *Arbitration agreement.* Prior to the commencement of an arbitration proceeding, the parties to arbitration together with the neutral arbitrator shall create a written arbitration agreement, which at a minimum will state with specificity the issues to be arbitrated and the corresponding monetary award cap to which the parties have agreed. The agreement may contain other mutually agreed upon provisions.

(1) Any additional issues selected for arbitration by the parties, that are not outside the scope of these arbitration rules as explained in § 1108.2(b), must be subject to the Board's statutory authority.

(2) These rules shall be incorporated by reference into any arbitration agreement conducted pursuant to an arbitration complaint filed with the Board.

#### § 1108.6 Arbitrators.

(a) *Panel of arbitrators.* Unless otherwise requested in writing pursuant to § 1108.5(a)(1), all matters arbitrated under these rules shall be resolved by a panel of three arbitrators.

(b) *Party-appointed arbitrators.* The party or parties on each side of an arbitration dispute shall select one arbitrator, and serve notice of the selection upon the Board and the opposing party within 20 days of an arbitration answer being filed.

(1) Parties on one side of an arbitration proceeding may not challenge the arbitrator selected by the opposing side.

(2) Parties to an arbitration proceeding are responsible for the costs of the arbitrator they select.

(c) *Selecting the neutral arbitrator.* The Board shall provide the parties with a

list of five neutral arbitrators within 20 days of an arbitration answer being filed. When compiling a list of neutral arbitrators for a particular arbitration proceeding, the Board will conduct searches for arbitration experts by contacting appropriate professional arbitration associations. The parties will have 14 days from the date the Board provides them with this list to select a neutral arbitrator using a single strike methodology. The complainant will strike one name from the list first. The respondent will then have the opportunity to strike one name from the list. The process will then repeat until one individual on the list remains, who shall be the neutral arbitrator.

(1) The parties are responsible for conducting their own due diligence in striking names from the neutral arbitrator list. The final selection of a neutral arbitrator is not challengeable before the Board.

(2) The parties shall split the cost of the neutral arbitrator.

(3) The neutral arbitrator appointed through the strike methodology shall serve as the head of the arbitration panel and will be responsible for ensuring that the tasks detailed in §§ 1108.7 and 1108.9 are accomplished.

(d) *Use of a single arbitrator.* Parties to arbitration may request the use of a single-neutral arbitrator. Requests for use of a single-neutral arbitrator must be included in a complaint or an answer as required in § 1108.5(a)(1). Parties to both sides of an arbitration dispute must agree to the use of a single-neutral arbitrator in writing. If the single-arbitrator option is selected, the arbitrator selection procedures outlined in § 1108.6(c) shall apply.

(e) *Arbitrator incapacitation.* If at any time during the arbitration process a selected arbitrator becomes incapacitated or is unwilling or unable to fulfill his or her duties, a replacement arbitrator shall be promptly selected by either of the following processes:

(1) If the incapacitated arbitrator was appointed directly by a party to the arbitration, the appointing party shall, without delay, appoint a replacement arbitrator pursuant to the procedures set forth in § 1108.6(b).

(2) If the incapacitated arbitrator was the neutral arbitrator, the parties

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shall promptly inform the Board of the neutral arbitrator's incapacitation and the selection procedures set forth in § 1108.6(c) shall apply.

### § 1108.7 Arbitration procedures.

(a) *Arbitration evidentiary phase timetable.* Whether the parties select a single arbitrator or a panel of three arbitrators, the neutral arbitrator shall establish all rules deemed necessary for each arbitration proceeding, including with regard to discovery, the submission of evidence, and the treatment of confidential information, subject to the requirement that this evidentiary phase shall be completed within 90 days from the start date established by the neutral arbitrator.

(b) *Written decision timetable.* The neutral arbitrator will be responsible for writing the arbitration decision. The unredacted arbitration decision must be served on the parties within 30 days of completion of the evidentiary phase. A redacted copy of the arbitration decision must be served upon the Board within 60 days of the close of the evidentiary phase for publication on the Board's Web site.

(c) *Extensions to the arbitration timetable.* Petitions for extensions to the arbitration timetable shall only be considered in cases of arbitrator incapacitation as detailed in § 1108.6(e).

(d) *Protective orders.* Any party, on either side of an arbitration proceeding, may request that discovery and the submission of evidence be conducted pursuant to a standard protective order agreement.

### § 1108.8 Relief.

(a) *Relief available.* An arbitrator may grant relief in the form of monetary damages to the extent they are available under this part or as agreed to in writing by the parties.

(b) *Relief not available.* No injunctive relief shall be available in Board arbitration proceedings.

### § 1108.9 Decisions.

(a) *Decision requirements.* Whether by a panel of arbitrators or a single-neutral arbitrator, all arbitration decisions shall be in writing and shall contain findings of fact and conclusions of law. The neutral arbitrator shall pro-

vide an unredacted draft of the arbitration decision to the parties to the dispute.

(b) *Redacting arbitration decision.* The neutral arbitrator shall also provide the parties with a draft of the decision that redacts or omits all proprietary business information and confidential information pursuant to any such requests of the parties under the arbitration agreement.

(c) *Party input.* The parties may then suggest what, if any, additional redactions they think are required to protect against the disclosure of proprietary and confidential information in the decision.

(d) *Neutral arbitrator authority.* The neutral arbitrator shall retain the final authority to determine what additional redactions are appropriate to make.

(e) *Service of arbitration decision.* The neutral arbitrator shall serve copies of the unredacted decision upon the parties in accordance with the timetable and requirements set forth in § 1108.7(b). The neutral arbitrator shall also serve copies of the redacted decision upon the parties and the Board in accordance with the timetable and requirements set forth in § 1108.7(b). The arbitrator may serve the decision via any service method permitted by the Board's regulations.

(f) *Service in the case of an appeal.* In the event an arbitration decision is appealed to the Board, the neutral arbitrator shall, without delay and under seal, serve upon the Board an unredacted copy of the arbitration decision.

(g) *Publication of decision.* Redacted copies of the arbitration decisions shall be published and maintained on the Board's Web site.

(h) *Arbitration decisions are binding.* By arbitrating pursuant to these procedures, each party agrees that the decision and award of the arbitrator(s) shall be binding and judicially enforceable in any court of appropriate jurisdiction, subject to the rights of appeal provided in § 1108.11.

### § 1108.10 Precedent.

Decisions rendered by arbitrators pursuant to these rules may be guided by, but need not be bound by, agency precedent. Arbitration decisions shall